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ABSTRACT

The study of literature and the law, within the context of a literature course, can serve to develop, in prospective lawyers as well as in lay citizens, insight into the significant relationships between the two fields. This paper provides a rationale for one such course, conducted at the University of Arkansas at Fayetteville, and details its development and content. Students compared the law and legal writing to more specifically "literary" creations, observed the manner in which the law is involved in imaginative literature and other types of literature, and examined the implications of the relationships among literature, language, and the law. A description of course organization and a discussion of assigned readings are included. (KS)

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LITERATURE AND THE LAW: AN INTERDISCIPLINARY LIBERAL ARTS COURSE

Blair Rouse

Lest I seem to have donned the wig and "taken silk" without proper authority, I must assure you that in the realm of the Law I am a layman. I have neither been called nor admitted to any bar--at least not any that courts, domestic or foreign, would recognize. I believe, however, that I may claim to be an amateur of the Law--if one may understand "amateur" in its radical sense as derived from the Latin amo and not with the debased denotation of these times in which it often signifies supposedly non-professional athletic endeavor or is misused with a pejorative connotation. The teaching of Literature and Language has been my profession for nearly two score years--a rewarding if often difficult vocation. The study of Literature and Language and the exploration of related disciplines are, for me, both vocation and avocation. Of course, I do not presume, as did that eminent jurist, Francis Bacon, to arrogate to myself all knowledge as my province. Yet, in studying and teaching Literature and Language throughout my adult years, except when war drew me into less interesting and valuable activity, I have found very little in the web of human experience that is not pertinent to the perception, through Understanding and Reason, of the workings of Language and the powers and meanings of Literature.

Hence arises my interest in interdisciplinary studies and my recognition of what I believe to be their value for the Liberal Arts curricula in this time when ultra-extra-over-specialization lends some validity to the popular notion of the scholar as one who knows more and more about less and less—and less. I know that I rarely meet a class studying Literature in which I do not draw, so far as I am able, on the knowledge and technical procedures of philosophy, psychology, history, the natural sciences, the other Arts, and, yes, the Law. There are, I suppose, some disciplines which may be studied and taught within very narrowly circumscribed limits of thought and activity. Literature and Language, however, are not among them. Neither, I suspect, is the Law.

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My particular interest in the Law as and in Literature may be accounted for, in varying degrees, by my having grown up in a Virginia courthouse town thickly populated with attorneys, judges, clerks, and other legal phenomena; by my childhood association with my grandfather who, as a sometime school teacher, delighted in history and politics and the local activities on court days; by my own involvement in history, with an increasing interest in the role of the Law in both history and Literature; and by my keen interst in the intellectual adventures of my son, now a member of the New York City Bar, in his studies in foreign affairs and in Law. In his study of Law at Cornell University, he was fortunate in having a course which moved beyond the technology of Law. (Through my son I learned of Dr. Weisberg's activity, and I deeply appreciate the interst he has taken in what I have been undertaking.) All this and possibly much else, as well as a good deal of what I hope is scholarly curiosity, may account for my initial and continuing interest in exploring the possibilities of a course in Literature and the Law in a college of arts and sciences--occasionally liberal--in a state university.

As I have indicated I am an amateur of the Law. Certainly I make no claims of professional expertise in the technical aspects of Law, but I am able to investigate such matters when some knowledge of them is imperative for understanding the legal aspects of a literary work--or the literary values of legal writing. Perhaps more important for me, as teacher of a course in Literature and the Law but whose professional discipline is Literature and Language, is an interest in the history and philosophy of the Law. I have indicated that I believe the teacher of Literature and Language must have at least a speaking acquaintance with other disciplines. Language and Literature most intimately concern that which makes mankind human: possession of language as the vehicle of human thought and of literature as the expression of human thought and feeling. The English teacher may aspire to know much beyond his special area of expertise, but he must recognize

his limitations. He must know what he knows but admit that there are many things that he doesn't know. Yet he must draw extensively on the other humanities as well as on the sciences in his teaching and research into Language and Literature, and he must relate his disciplines to other disciplines of learning.

I have already indicated that I believe college and university teaching and research are too often excessively specialized. (I recall a young woman who, for a time, was a colleague. She was "trained"—not educated—in folklore and objected to being required to teach courses in lower division world literature. She was a FOLKLORIST!) Except for administrative purposes, which really are matters of relatively little importance, the artificial dividing of the realms of human experience cannot be justified in a college of the liberal arts and sciences. The professional schools, such as the Law schools, may have more justification for somewhat narrowly technological curricula, but I doubt it. (I am interested in Professor Smith's views on these matters and welcome any corrections he or others may provide for my observations.)

Some of us in the English Department at the University of Arkansas, at the main campus at Fayetteville, have been offering interdisciplinary courses with the conviction that students, whatever their intended careers, should be aware of the close relationships in the realms of learning. Such courses may enable us to graduate Bachelors of Arts or Bachelors of Science who are even in some small degree more "liberally" educated than they would be otherwise. I cannot see that colleges devoted to more precisely professional training (not education) actually educate students in any sense that the word carries meaning. I believe that they could do so and should do so, but I seek in vain for evidence of such true education. Vocational training is provided in colleges of Education, Agriculture and Home Economics, Engineering, and Business Administration. Law and Medicine do require pre-professional studies, and a university may have very limited basic

requirements for graduation. In such "Basic" areas some "liberal" education may be provided. (However, I once served on a Pre-Medical Committee, and I recall that my urging that prospective physicians might well major in English or philosophy was not viewed favorably by my colleagues in the sciences.)

It seems obvious to me that one who embraces the Law as a profession should be an educated person, that is, one who has acquired for his Understanding and Reasoning the resources of the arts and sciences that lie beyond but may be related to the uses of the technology of the Law and its practice. Surely, the Law, in some of its branches, is a liberal, humanistic discipline. But I am not assured that many law schools provide other than the vocational training in the legal technology required for the performance of the activities of law practice. I am indeed aware that Ars longis, tempus fugit, and I may be assured that a three-year law program does not have time for the further education of the man of law in other than the techniques of the profession. Such a program may well provide necessary training and may produce adequately qualified technicians. It may be questioned whether such a curriculum can produce professionally educated legal scholars who are truly members of a learned profession. Of course, the intelligent, energetic, and curious legal technician may become an educated man through his own further independent study or through post-J.D. graduate study. However, I doubt that many men and women, having finished the work of the law school, passed the bar examinations, and, happily, found work as lawyers, are likely to carry on such study on their own; they may be unaware of their actual needs and have little time or energy to give to such scholarly pursuits. The law school may, with good reason, say that the aspiring lawyer should have acquired his "liberal education" before entering law school. If this be so, it may also be reasonable for the law school to require such educational prerequisites to admission to the law school. (Certainly, it should be ascertained whether the person seeking admission can actually read and write.) I am suggesting that the education of the lawyer should

include somewhere the study of much of "the Law" that is other than the technology required for passing the bar and engaging in legal practice--that is, if the holders of law degrees are to be considered truly professionally educated people.

What I have in mind specifically is the thorough education, not just "training," of people for what should always be a learned profession. If this be admitted, then the holder of a law degree should know the history of the Law, at least that of the Occident, if not the Orient, the philosophy of Law, and the fundamentals of civil and canon law as well as English and American law. This and much else should be part of the education of the lawyer. I consider such learning as analogous to the study of mathematics and physical sciences as prerequisites to the "training" of engineers in their chosen "technologies." The "much else" needed for the educated lawyer would include wide reading in the literature of the world, study of ancient and modern history, philosophy—logic, ethics, aesthetics, and the history of philosophy, the fundamentals of government and of foreign affairs, and at least a reading knowledge of Latin and French—as well as English. Probably much of this should be prerequisite to entry into the law school. Wherever or whenever it comes, to me it seems imperative. Assuming that Law is indeed a "liberal" discipline but that much of what I have just suggested cannot be squeezed into a three-year law program, courses concerned with the relationships of the Law to history, philosophy, political science, and literature might well be included in the humanities and the social science curricula of colleges and universities as introductory to what should be taught on a more advanced level in the law school. Again, it may be said that there is no room for such matters in the inns—of court. Yet, it seems to me that a lawyer more or less ignorant of the philosophy and history of the Law and of the different modes of that which is the Law is hardly educated in his profession—is, indeed, not a professionally prepared individual. If I am told that what I am insisting upon is already being done in the law schools, I shall be glad to know that. I have not made a canvass or

taken a poll on this subject . Yet I do have the unpleasant impression that some lawyers, like some physicians, may be well-trained as technicians but uneducated.

In our time so-called college and university education has become almost completely amorphous in structure on the undergraduate level. Degrees are awarded to uneducated people who have, somehow, amassed a requisite number of "hours" at a minimal "grade point average." This may mean that people who aspire to become members of the bar enter law schools unable to read or write and possibly—indeed probably—innocent of any knowledge of Literature beyond comic books, of philosophy beyond Norman Vincent Peale and Dale Carnegie, and of history nothing, or virtually nothing.

English is—or should be—a liberal, humanistic discipline. I assume that we recall that the word liberal in the term "liberal arts" means liberating; so—a study is liberal if it liberates the human mind and spirit so that human beings live and act to their full capacity. All else is dross. The humanistic, liberating forces of Language and, more particularly, Literature studies were jeopardized in the 19th century by the activities of some philologists who apparently believed that only by limiting their investigations to what they could think of as the science of philology could they claim respectability as scholars. Such studies can be useful, but they can only be ancillary to the study of human expression as organic and, if it is indeed art, then living and the product of the living human imagination. And this involves the Law as well as Literature.

The course in LITERATURE AND THE LAW, which I taught in the spring semester of 1976 and which I expect to teach again in the coming spring semester of 1977, is an experimental, interdisciplinary course—one of several such courses offered by the Department of English at the University of Arkansas at the main campus in Fayetteville. As I wish it, its status is experimental. It could become a "regular" course offering later, but I prefer to keep it in its present status now. It is

an English course, and the emphasis is on Literature—that legal writing or writing about the Law which may justifiably be considered as Literature and that Literature which in some respect is concerned with or affected by legal—or illegal—activities and by all that may be considered part of the discipline of the Law. It is a course in Literature in relation to the Law, not a Law course.

I have said enough to indicate what my definitions of the Law might include. To those initiated into the mysteries of the Bar, I hope I have not seemed to speak from the bliss of total ignorance. However, a definition of "Literature" that may satisfy anyone but its maker may be hard to come by. Messrs. Wellek and Warren in their THEORY OF LITERATURE struggle—effectively, I believe—with this problem. They say (p. 27, revised edition) that "a literary work of art is not a simple object but rather a highly complex organization of a stratified character with multiple meanings and relationships." This is, of course, not a definition, but it does point in directions where a definition may be sought. Also it indicates that Literature as an art or an art form cannot be subjected to any oversimplified definition limiting it to writing (or speaking) having perhaps one or two qualities or characteristics. In my course, we give this problem, especially as it concerns writing from the Law, painstaking and often painful consideration. Certainly, we find literature in writing that may not readily be considered belles lettres. "Literature," as a descriptive and evaluative term may, perhaps, be applied to writing which is art although its primary purposes are other than purely literary—such as scientific and historical and legal writing which moves and enlightens the human spirit and mind and which works to stimulate the imagination, all this within and beyond simply informing.

I believe that a course in Literature within the frame of reference to the Law-- which touches all humanity--can be of value not only to the prospective lawyer but to all college or university students. The fifteen students in the class last

spring included six pre-Law students, with varied undergraduate majors, six English majors, and one student each in history, speech, and sociology. Three students were in the College of Education, twelve were in the College of Arts of Sciences; one was a graduate student. I shall be interested in the distribution of students in the coming spring semester. As the course is an elective and not now required by any program so far as I am aware, it is taken by students who choose it, not by those who must take it: an advantage as well as a disadvantage.

I have tried to keep in mind my concept of the Law as well as Literature as "liberal"--"liberating"--arts in arranging this course, although much of the material I use may appear to be mainly concerned with the technical or practical concerns of the Law. Yet behind or beneath appearances usually lie the controlling factors that justify considering the Law and Literature as liberal, learned disciplines. In the paper I drew up as a "tentative proposal" for the course, I included some matters which eventually found their way into the syllabus for the course used last spring. I also included a good deal more that I did not find I could use in a one semester, primarily undergraduate course. Under ORGANIZATION I had:

A. Critical Theory of the Nature of Literature and the Law
   a) What is literature? (Theory of Literature)
   b) What is the Law? (Theory of the Law as a discipline)

B. The Law in Literature
C. Literature affected by the Law
D. The Law as Literature
E. Law affected by Literature
F. Language, Literature, and the Law

Under A. THEORY, I had

a) Theory of Literature (What is Literature?)
   Attempts at definitions
   Discriminations
   Characteristics of that which is Literature
   "Border-line"

b) The idea of the Law as a discipline
   Attempts at definition and discrimination
   Philosophy of the Law
   Law as a "learned" discipline
   Writing in and about Law as science and art
   Prose style and the written expression of the Law

Part C, Literature affected by the Law, I have found difficult to treat in isolation, but the subject does enter into consideration of other matters in the course. Law affected by Literature I have also found difficult to deal with in any convincing and clearly valid way. Originally, I thought of these possibilities:

a) Changes in attitudes influenced by Literature and resulting in change in Law:
Abolition writing--both pro-slavery and anti-slavery

b) Literature influencing more or less directly changes in laws or even governments:
Melville, White-Jacket and naval floggling
Sinclair, The Jungle
Steinbeck, The Grapes of Wrath
Beaumarchais and the French Revolution
Voltaire and Rousseau and the French Revolution

c) Literature and censorship:
Theodore Dreiser and censorship actions
James Joyce, Ulysses and Dubliners
D. H. Lawrence, sex and censorship
Obscenity and pornography and the censorship of Literature
Is censorship ever justified?

Much consideration of these matters may come into the work of the course but not in isolation.

Language, Literature and the Law

a) Purposes of users of Language and the results in Literature and Law
b) Interpretation of Language in Literature and in Law
Criticism and legal interpretation

c) Further considerations concerning Language in the two disciplines
(For much of value in these matters, see Probert, LAW, LANGUAGE, AND COMMUNICATION.)

In this tentative proposal, in addition to a listing of the materials in London's two volumes, THE WORLD OF LAW, I also listed a number of works that would be useful in the course, including these: George Orwell's writings; Wellek and Warren, THEORY OF LITERATURE; Jerome Frank, LAW AND THE MODERN MIND; White, THE LEGAL IMAGINATION; Frankfurter, OF LAWS AND MEN; Holmes, THE COMMON LAW; Pound, AN INTRODUCTION TO THE PHILOSOPHY OF LAW; Mill, ON LIBERTY; Browning, THE RING AND THE BOOK; Faulkner, KNIGHT'S GAMBIT; A. P. Herbert, MISLEADING CASES IN THE COMMON LAW; Hocking, THE PRESENT STATE OF LAW AND OF RIGHTS; Montesquieu, THE SPIRIT OF THE LAWS,

and much more. Some of the materials in this tentative proposal eventually found places in the course as I taught it last spring.

In the course description, provided for advisors, as well as in the papers provided for the students, I offer this statement of PURPOSES:

The disciplines of Literature and Law have more than incidental relations in most genres of the former. Students in this course will have opportunities to:

1. Observe how the Law and legal writing are related to more precisely literary creations.
2. Observe how the Law frequently is significantly involved in imaginative and other Literature.
3. Observe how the Law in some of its written forms is Literature.
4. Observe other possible considerations of the relations of Literature, Language and the Law.

In my revision of the plans for the course for the spring semester, 1977, item #3 above--"Observe how the Law in some of its written forms is Literature" becomes item #2, and item #2 above--"Observe how the Law frequently is significantly involved in imaginative and other Literature"--becomes item #3. This change takes into consideration other rearrangements I have made in the course. The paragraph which follows the enumeration of "purposes" I have retained in this revision. It runs as follows:

> While the emphases in the course are on Literature, in its relations to the Law as a learned discipline and a profession, this course is not intended only for English majors and pre-Law students. The reading, lectures, discussions, etc., are designed to be of value to the students in law, history, political science, philosophy, psychology, foreign languages, sociology, and anthropology. It is reasonable to believe that the work of the course can be of value to students in the branches of the humanities, in the sciences, and in other professional disciplines.

The procedures which I followed when I taught the course last spring included some lecturing, class discussion of both assigned and unassigned reading, panel discussions, the writing of several papers, several period-length tests, and a final examination. When I teach the course again this coming semester, I hope to

have more student participation through discussion of materials read, more panel discussions, and more brief reports. Actually, what I shall be able to do must depend on the size of the class.

Last spring I used the anthology edited in two volumes by Ephraim London: THE LAW IN LITERATURE and THE LAW AS LITERATURE. Also I assigned as required texts Kafka's THE TRIAL and Camus' THE STRANGER. I used as supplementary texts these six novels: Solzhenitsyn's THE FIRST CIRCLE, Dostoevsky's THE HOUSE OF THE DEAD, CRIME AND PUNISHMENT, and THE BROTHERS KARAMAZOV, Melville's BILLY BUDD, and Koestler's DARKNESS AT NOON. Students were required to read one of these "supplementary" works in addition to the reading of the text works required for all students.

Londons' two-volume anthology provides a useful collection of writings in relatively inexpensive paperback form. I find, however, that these volumes must be used with discretion...which is true of most anthologies. Some selections in these books are only slightly or insignificantly related to the Law, and some selections lack literary value--that is, value as art. However, these volumes provide a wealth of material from which one can choose the writings he judges of real value for the students in the course. Of the two novels assigned as <u>required</u> reading last spring, I found that Kafka's THE TRIAL worked well but that Camus' THE STRANGER did not. Although THE STRANGER involves operations of law and justice, I believe its focus lies elsewhere. (Of course, this view may really involve my own reactions to the two books.)

I thought of using James B. White's THE LEGAL IMAGINATION as a required text but decided not to do so. I believe the book would be an excellent textbook for the course designed by Professor White to be taught in law schools as part of a law school's curriculum, especially if it might be used in conjunction with London's volumes and with two or three novels assigned for all students to read. I suppose it is obvious that selections from London and White would have to be assigned as

required reading; time would not permit the assignment of all of both books in a semester's course. However, I believe the purposes and focus of my course are significantly different from those of the course for which Professor White designed THE LEGAL IMAGINATION. It seems to me that the latter course is a special variety of law course focused on the Law and with the purposes of developing the law student's reading and writing ability. Literature and its values and relationships to the Law are certainly given proper emphasis by Professor White, but the course for which THE LEGAL IMAGINATION might serve as a text emphasizes writing and is, indeed, more nearly a composition course for law students than it is a course in Literature and the Law. I hope that I shall not be misunderstood in what I have just said. Improvement in the writing of law students--and lawyers--is certainly to be desired. Emphasis on effective writing should be found in all professional education. And I suspect that many law schools find it necessary to provide composition courses for their students. Of course, Professor White's THE LEGAL IMAGINATION is a great deal more than just another composition text; the readings and the questions and problems are excellent. Nevertheless, I still believe that the focus is on the law school curriculum rather than on that of the liberal arts college. Furthermore, the cost of the book ($15.00 when I obtained my copy) would make it difficult to require the purchase of additional books. This might not constitute a problem in the law school if THE LEGAL IMAGINATION were to be used in a course which all law students were required to take--though it could be a bit rough on the pocketbooks of the students. But I have had to consider the cost of required texts all students must purchase for a course which is an elective and not required in any curriculum. In such a situation one can price oneself right out of a class. I do have White's THE LEGAL IMAGINATION on the reserve shelf for student reading.

Near the end of the semester last spring, I asked the students about their preferences in the reading and in the arrangement of that reading. I found that

London's second volume, THE LAW AS LITERATURE, was preferred to the first volume, THE LAW IN LITERATURE: that the students thought the selections in THE LAW AS LITERATURE were more interesting and superior as expression and revelation of human experience; they wished we had used THE LAW AS LITERATURE first. I believe their judgments are valid. There may be reasons for the difference in the quality of the materials in the two volumes. The editor, an eminent lawyer, may be a good judge of legal writing that is both good legal writing and that also has virtue as literary art. On the other hand, he seems to have used as a criterion in selecting works for THE LAW IN LITERATURE simply the presence of legal--or illegal--affairs in the pieces chosen and not to have exercised necessary discrimination in judging the literary worth of these selections. However, there is more than enough material in the two volumes to suffice for assignments in a course. Another reason for using THE LAW AS LITERATURE first may be that the initial focus in the minds of many students may be on the course as one directed toward the Law as a discipline which may produce writing that is literary art as well as legal discourse. I do not suggest that the students are necessarily conscious of this focus at the beginning of the semester, but subconsciously this may be their inclination. Also considering THE LAW AS LITERATURE first may provide a more effective initiation of the students into the realms of the Law and its ways. One must recall that, with probably rare exceptions, the students in this course will not have entered law school.

Some students wished there had been opportunity to read and carry on exploratory discussions of more longer complete works--novels or plays--considering the author's use of law, the significance of this use of law for the effectiveness of the work, and the value of the work as literature. I, too, wished we had done this, though the problem of available time was and continues to be a difficulty. Nevertheless, I have decided to assign three novels as required reading in the course in the coming spring, 1977, semester: Dickens' BLEAK HOUSE, Dostoevsky's

CRIME AND PUNISHMENT, and, again, Kafka's THE TRIAL. To the "Supplementary Works," from which the students choose one more novel for reading, I have added Melville's BENITO CERENO to his BILLY BUDD, while deleting CRIME AND PUNISHMENT, which is now to be required reading for all students. I believe these changes provide a better balance and variety for both the "required" texts and the "supplementary" list. Moreover, I had come to believe that Dickens and the Law should be given more attention.

After considering the novels read as complete works, we shall read selections from London's THE LAW IN LITERATURE. I have tried to make the assignments with more concern for the value of the selections as literature and the extent and importance of the use of law and legal matters as criteria in judging the worth of the selections for the course.

I might have mentioned in my comments concerning my rejection of Professor White's THE LEGAL IMAGINATION as a text for this course that I prefer, so far as may be possible, to use primary materials as required texts in the courses I teach rather than what are usually and properly called "textbooks." "Textbooks" may be the appropriate texts for freshman and sophomore courses; I doubt that they are often valuable in upper division and graduate courses except in some obviously special courses, such as a course in bibliography and research.

In addition to tests and a final examination, students write a brief critical report--a paper running from about 800 to 1000 words--on the novel they read from the Supplementary List. Graduate students submit an additional critical paper about 2500 words in length on a subject they choose in consultation with me.

I arrange for a number of books to be placed on reserve in the main library of the University of Arkansas. Some books held only in the library of the School of Law will be placed on reserve in that library for the use of the students in this course. In the revised and considerably shortened Reserve List, I have tried

to limit the books chosen to works which I believe may be of very real use to the students. Books on reserve are on "two-day" reserve; that is, the student may check them out for two days. I believe it reasonable for the student to have a reasonable stretch of time in which to use books.

I wish to mention several works which have been and will continue to be useful for me. I am grateful to Professor Weisberg for his essays and to the RUTGERS LAW REVIEW for the articles in their "Law and Literature: a Symposium." I strongly recommend Dr. Weisberg's article in which he revisits and revises Wigmore's list of one hundred legal novels.

Laymen need to be made more keenly aware that the Law is something more than what may have impressed them after an unwilling visit to a police court. I submit that the study of Literature and the Law in a literature course may serve usefully in developing in prospective lay citizens as well as in prospective lawyers an insight into the significant relationships of Literature and Law as liberating--liberal--arts which are important for the understanding of men and women as human beings.

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